

### **REMARKS**

All of the claims—Claims 1-19—have been allowed as stated in the Office Action dated December 12, 2008. This application is in condition for allowance except for the formal matters addressed below. Prosecution as to the merits has been closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Specification**

The Examiner has objected to the Specification as not complying with 37 C.F.R. §1.78(5)(i), because the Specification does not contain a reference to Applications for which the present Application claims benefit. Applicants have amended the Specification to add a statement indicating that the present application is a U.S. National stage application claiming the benefit of provisional application 60/478,521.

Both computer readable and written forms of the Sequence Listing in accordance with 37 C.F.R. §§ 1.821-1.825, the required Statements 37 C.F.R. §§ 1.821-1.825, and an amendment specifically directing entry of the sequence listing into the application are provided herewith.

### **Drawings (Brief Description of the Drawings)**

The Examiner requested new corrected drawings because Figure 3 includes nucleic acid sequence information without sequence identifiers and reference to a Sequence Listing. Applicants concur that the nucleic acid sequence information in Figure 3 requires sequence identifiers and reference to a Sequence Listing in compliance with 37 C.F.R. §§ 1.821-1.825. Applicants however respectfully point out that such corrections can be effected with either new

corrected drawings or appropriate amendments to the descriptions of the drawings as per MPEP § 2422.02 , which states:

It should be noted, though, that when a sequence is presented in a drawing, regardless of the format or the manner of presentation of that sequence in the drawing, the sequence must still be included in the Sequence Listing and the sequence identifier ("SEQ ID NO:X") must be used, *either* in the drawing *or* in the Brief Description of the Drawings.(emphasis added).

Thus, instead of amending the drawings, Applicants may provide the appropriate sequence identifiers by amending the Brief Description of the Drawings to contain the required information. Applicants have amended the Brief Description of Figure 3 to clearly designate the sequences flanking the *bsd* gene with sequence identifiers SEQ ID NO:1 and SEQ ID NO:2. Applicants have also submitted a separate, corresponding Sequence Listing. The Sequence Listing incorporates the exact nucleic acid sequence as listed in Figure 3 of the Specification as originally filed. Therefore, the new Sequence Listing finds support in the original Specification and does not include new matter. Applicants have concurrently provided a statement as required under 37 C.F.R. § 1.821(g) that the new submission includes no new matter.

Applicants believe that they have remedied or rendered moot all of the Examiner's objections to the formal requirements and respectfully request that the Examiner allow the present Application to issue.

**CONCLUSION**

It is not believed that any extensions of time are required beyond those, which may otherwise be provided for in the filing of this Amendment. However, in the event that additional extensions of time or other fees are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. §1.136(a), and any fees required are hereby authorized to be charged to our Deposit Account No. 20-0823.

The Examiner is encouraged to contact the undersigned via telephone at the number provided, if it is determined that personal communication will expedite prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Charles P. Romano', is written over a horizontal line.

Charles P. Romano, Reg. No. 56,991

**Thompson Coburn LLP**

One US Bank Plaza

St. Louis, MO 63101-1693

(314) 552-6255

(314) 552-7255 (fax)

Agent for Applicants

**Dated: February 10, 2009**